



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2017

(Reserved on 25.04.2017)

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.1007 of 2011

and

MP (MD) No.1 of 2011

- 1) Harris
- 2) Chellathai (Died)
- 3) Kasi Thangam
- 4) Ramu
- 5) Amutha
- 6) Gangatharan
- 7) Anitha
- 8) Rajesh

... Petitioners

(Petitioners 6 to 8 are brought on record as LRS of deceased 2nd Petitioner vide court order dated 05.04.2017 made in CMP (MD) No.3017 of 2017)

vs.

- 1) R. Paulraj
- 2) Murukan
- 3) Rajan
- 4) Selvakumar
- 5) Selvi
- 6) Kala
- 7) Saraswathy
- 8) Selvin
- 9) Saroja
- 10) Ramesh
- 11) Sheeba
- 12) Jeyanthi
- 13) Chandran

... Respondents

(Respondents 2 to 13 are given up in the CRP)

Petition filed under Section 115 of the Civil Procedure Code, against the order and decreetal order dated 21.04.2011 of the learned Principal District Munsif, Padmanabhapuram made in E.P.No.4 of 2009 in O.S.No.217 of 1990.



For Petitioners : Mr.K.N.Thampi
For R1 : Mr.K.Balasubramani

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ORDER

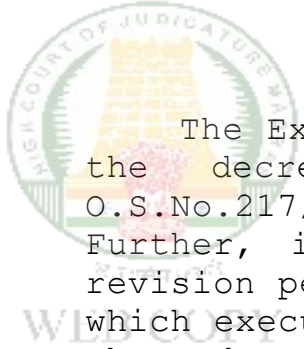
The case of the revision petitioners is that the EP filed to execute the decree passed in O.S.No.217/90 on the file of the Principal District Munsif, Padmanabhapuram, is not maintainable since the decree is inexecutable due to the supersession of the decree passed in the subsequent suit O.S.No.376/2000.

2.The case relates to 1 cent of land and a hut thereon in R.S.No.40/16 at Aruvikarai Village, Kalkulam Taluk, Tiruvattar Village, Kanyakumari District. The 1st respondent herein/plaintiff in his suit for declaration and possession in respect of this property along with other properties has succeeded and a decree in O.S.No.217/90 was passed on 11.08.1997. In the execution petition E.P.No.4/2009, the judgment debtors have filed counter contending that the ex parte decree passed in O.S.No.217/90 had been declared as null and void in the subsequent suit O.S.No.376/2000. Further, the decree holder filed another suit for declaration and possession in respect of 5 cents including the one cent and hut therein. The said suit was contested by one Selvamani who is the grandfather of defendants 11 to 14 and the Court has held that the said Selvamani is the title holder of 5 cents of land in old S.No.1304 of the said village. Since the decree in O.S.No.217/90 has been set aside in O.S.Nos.376/00 and 329/01, the prior decree in O.S.No.217/90 is superseded by the later decrees.

3.The Trial Court after considering the decree sought to be executed and the subsequent two decrees passed in O.S.Nos.376/00 and 329/01 has held that in O.S.No.376/00, the Court has declared the decree passed in O.S.No.217/90 as invalid only in respect defendants 6 to 10. So, except defendants 6 to 10, the decree was not declared as invalid *in toto*.

4.The other suit O.S.No.329/01 filed by the decree holder for large extent of land including the 1 cent and hut in R.S.No.40/16 was dismissed on the ground that the suit is hit by the principle of *res judicata* and also barred under Order 2 Rule 2 CPC. Holding that in both the subsequent decrees, the prior decree passed against the defendants 1 to 5 had not been altered, the Trial Court allowed the EP rejecting the plea of the respondents 1 to 4 and 11 to 14 in E.P.No.4/2009.

5.Aggrieved by the order of the Execution Court, this revision petition is filed on the following grounds:-



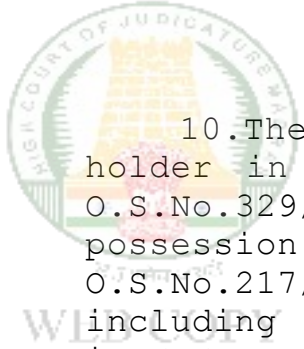
The Execution Court ought to have dismissed the EP in view of the decree in O.S.No.376/00 superseding the decree in O.S.No.217/90 and in view of the decree passed in O.S.No.329/01. Further, it is also contended by the learned counsel for the revision petitioners that the EP schedule property with respect to which execution is sought is unidentifiable and vague. Therefore, the order of the Execution Court allowing the EP is bad in law.

6.Per contra, the learned counsel for the 1st respondent/decree holder submitted that the revision petitioners herein are not the parties arrayed as defendants 6 to 10 in O.S.No.376/00. The lower appellate Court has correctly held that the decree passed in O.S.No.217/90 has been held invalid only in respect of the defendants 6 to 10 and not against the other defendants. The present revision petitioners are the judgment debtors in O.S.No.217/90 against whom the decree passed is unaltered by the subsequent decree passed in O.S.No.376/00. Therefore, it is incorrect to say that the subsequent decree passed in O.S.No.376/00 has superseded the earlier decree passed in O.S.No.217/90. Furthermore, the learned counsel for the 1st respondent submitted that as far as the decree passed in O.S.No.329/01 is concerned, the Trial Court had in fact taken note of the earlier decree passed in O.S.No.217/90 and thereafter dismissed the subsequent suit on the principle of *res judicata* and barred under Order 2 Rule 2 CPC. Therefore, there is no legal impediment in enforcing the decree passed in O.S.No.217/90 as against the revision petitioners herein.

7.Insofar as the contention that the decree passed in O.S.No.217/90 inexecutable, the counsel for the 1st respondent submitted that the property in the said suit is distinct and identifiable property that is the reason why, it has been shown separately even while filing the suit and decree has been passed accordingly.

8.I have considered the rival submissions made by the respective parties.

9.The decree passed in O.S.No.217/90 is in respect of 3 items of property wherein, the present execution petition is in respect of the land about 1 cent and hut put up on the said land. This property is shown as second item in the suit schedule. The survey number of the property is specifically mentioned as T.S.No.40/16. In the subsequent suit filed by some of the defendants in O.S.No.376/00, the Trial Court found that the defendants 6 to 10 were shown as major and decree has been obtained even though they were minors at that point of time. For that purpose, the decree against those persons who were wrongly described as major though they were minors was set aside.



10. The 1st respondent herein namely, Paulraj who is the decree holder in O.S.No.217/90 has subsequently filed another suit in O.S.No.329/01 as against the same defendants for declaration, possession and injunction alleging that after the decree in O.S.No.217/90, the defendants encroached upon 5 cents of land including the one cent for which decree was passed in his favour in O.S.No.217/90. In the said suit, the Trial Court has framed four issues and one of the issues is whether the suit O.S.No.329/01 is hit by *res judicata* and barred under Order 2 Rule 2 CPC, in view of the decree passed in O.S.No.217/90 and O.S.No.376/00. In the said context, the Trial Court in O.S.No.329/01 has held that the decree in earlier suits acts as *res judicata* for the present suit and the suit is also barred under Order 2 Rule 2 CPC. As a consequence, the suit for declaration and possession filed by the 1st respondent herein has been dismissed.

11. It is very clear that the decree passed in O.S.No.217/90 has not been disturbed by the subsequent suits. Pointing out the earlier decree passed in O.S.No.217/90, the Court has declined to entertain the subsequent suit filed by the 1st respondent herein. Similarly, O.S.No.376/00 has been filed by S.Raju @ Murugan and others against the 1st respondent and few other parties alleging that the suit property originally owned by one Selvamani for which they and the defendants 2 to 6 are legal heirs. While so, the 1st defendant that is Paulraj, who is the plaintiff in O.S.Nos.217/90 and 329/01 claimed right over the property though he has no right in it, but for the ex parte decree passed in O.S.No.217/90.

12. In O.S.No.376/00, the Trial Court has dismissed the suit on the ground that the plaintiffs therein are not entitled for any declaration in respect of the suit schedule property. In the said suit, incidentally, the issue regarding the validity of the earlier decree passed in O.S.No.217/90 was framed and the Trial Court has held that the decree passed in O.S.No.217/90 is not valid in so far as the defendants 6 to 10. Aggrieved by the dismissal of their suit O.S.No.376/00, the plaintiffs namely, S.Raju @ Murugan and 7 others have preferred A.S.No.133/06 and in the said appeal, the lower Appellate Court after extracting the deposition of the parties, held that the suit was filed by S.Raju @ Murugan and others for partition and permanent injunction, without right, hence, dismissed the appeal confirming the Trial Court order *in toto*. Thus, it has been settled finally that the plaintiffs in O.S.No.376/00 are not entitled for any share in the suit property which includes the one cent and hut in T.S.No.40/16 which is the subject matter of the present EP.

13. The finding of the Courts in all the three suits clearly indicates that the right of the 1st respondent herein in respect of 1 cent and the right to evict the respondents/judgment debtors and



to remove the hut is confirmed and not been altered or questioned in the subsequent proceedings. More particularly, the present revision petitioners' right to seek share in the suit property has already been rejected in O.S.No.376/00 and the same has been confirmed by the lower appellate Court in A.S.No.133/06.

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14. Under these circumstances, just because there was some subsequent suit, it cannot be construed that the decree passed in the subsequent suit supersedes the earlier decree. Unless and until there is a specific declaration by the Court regarding the earlier decree, the enforceability of the earlier decree cannot be stopped, if it is otherwise enforceable. In this case, as pointed out by the lower Court, the subsequent decree has not saved the right of the judgment debtors so as to question the very enforceability of the decree passed in O.S.No.217/90. Therefore, this Court finds no error in the impugned order passed by the Execution Court.

Accordingly, the order dated 21.04.2011 passed by the learned Principal District Munsif, Padmanabhapuram in E.P.No.4 of 2009 in O.S.No.217 of 1990 is confirmed and this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Padmanabhapuram.

+1cc to Mr.K.Balasubramani, Advocate Sr.No.55799

+1cc to M/S.K.N.Thampi ADVOCATE SR.No. 55886

nbi

vb/sv/sar4/17.05.2017/5p/4c

Pre-Delivery order made in

CRP (NPD) (MD) No.1007 of 2011

05.05.2017